

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 488 of 2023
Date of complaint : 15.02.2023
Date of decision : 10.08.2023

Dinesh Kumar
R/o H. No. 427, Kumharo Ka Mohalla,
Nua, Jhunjhunu, Rajasthan.

Complainant

Versus

Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: Plot No. 12, Sector 4,
Faridabad, Haryana-121004.

Respondent

CORAM:

Vijay Kumar Goyal

Member

APPEARANCE:

Rajan Kumar Hans (Advocate)
Sidharth Sejwal (AR)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.N. | Particulars | Details |
|------|----------------------------------|--|
| 1 | Name and location of the project | "Riddhi Siddhi" at sector 99, Gurgaon, Haryana |
| 2 | Nature of the project | Affordable Group housing |
| 3 | Project area | 6.19375 acres |
| 4 | DTCP license no. | 86 of 2014 dated 09.08.2014 valid upto 08.08.2019 |
| 5 | RERA Registered/ not registered | Registered vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019 |
| 6 | Registration extension vide no. | Harera/GGM/REP/RC/236/2017/EXT/177/2019 dated 30.12.2019 valid upto 31.08.2020 |
| 7 | Unit no. | T7-0607, 6 th floor, Tower-T7 (page 19 of complaint) |
| 8 | Unit area admeasuring | 487 sq. ft. (Carpet area) (page 19 of complaint) |
| 9 | Date of allotment | 05.09.2015 (page 19 of complaint) |
| 10 | Date of builder buyer agreement | 05.12.2015 (Page 27 of complaint) |
| 11 | Date of building plan approval | 17.10.2014 (page 19 of reply) |
| 12 | Environmental clearance dated | 22.01.2016 (page 25 of reply) |
| 13 | Possession Clause | 8.1 EXPECTED TIME FOR HANDING OVER POSSESSION Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from |

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| | | |
|----|--------------------------------|---|
| | | <p><i>the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.</i></p> |
| 14 | Due date of possession | 22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016] |
| 15 | Total sale consideration | Rs.19,98,000/- (exclusive of taxes) (page no. 30 of complaint) |
| 16 | Amount paid by the complainant | Rs.21,56,903/- (including taxes) (as admitted by respondent on page no. 7 of reply) |
| 17 | Occupation certificate | OC has been applied but not yet obtained as confirmed by AR of respondent |
| 18 | Offer of possession | Not offered |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 1. That on the representation and advertisement by the respondent, the complainant booked a unit in the project named "Riddhi Siddhi" at Sector 99, Gurgaon, Haryana and was allotted a unit bearing no. T7-0607, 6th floor, Tower-T7 vide allotment letter dated 05.09.2015. Thereafter, a buyer's agreement was executed between the parties on

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- 05.12.2015 for a basic sale consideration of Rs.19,98,000/- and he has paid a total sum of Rs.21,56,903.39/- in all.
- II. That as per clause 8.1 of the buyer's agreement, the possession of the unit was to be handed over by 22.01.2020 but the same has not been offered till date despite receiving major sum of money from him.
 - III. That the respondent has not even paid any delay possession charges to the complainant till date. Therefore, he is seeking delay possession charges along with interest at prescribed rate from due date till actual delivery of the unit.
 - IV. That due to above acts of the respondent the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- C. Relief sought by the complainant:**
4. The complainant sought following relief(s).
 - I. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.
 5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
6. The respondent vide reply dated 31.03.2023 contested the complaint on the following grounds: -

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- i. That the project named "Riddhi Siddhi" is a group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013.
 - ii. That the complainant is seeking interest on the paid-up amount of Rs.21,56,903.39/-. But the amount received from the complainant is 19,98,000/- and the remaining amount was paid towards taxes.
 - iii. That the project of the respondent was delayed on account of various intervening factors like lockdown imposed due to Covid-19 pandemic, shortage of labour, stopping of work by National Green Tribunal and other authorities due to increase in pollution etc.
 - iv. That the allotment price of the unit was fixed by the Government of Haryana in 2013, but the same has not been revised till date. Although the construction cost was increased manifold, but the Government of Haryana had failed to increase the allotment price.
 - v. That the entire construction has been done and the project is near to completion. However, the formalities of obtaining occupation certificate remains pending.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainant.

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of

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Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainants.

F. I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

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11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. Clause 8.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

8.1 EXPECTED TIME FOR HANDING OVER POSSESSION

"Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.."

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

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prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.03.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
16. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.75%** by the respondent/

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promoter which is the same as is being granted to it in case of delayed possession charges.

18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1 of the agreement executed between the parties on 05.12.2015, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over possession was 22.01.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 05.12.2015 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.
19. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate and

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so, it can be said that the complainant shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given two months time from the date of offer of possession. This two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 22.01.2020 till the expiry of 2 months from the date of valid offer of possession or actual handing over of possession and whichever is earlier.

20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 05.12.2015 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of valid offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent shall pay delay possession interest at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 22.01.2020 till the date of actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate from the competent authority, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to hand over the possession to the complainant allottee on payment of outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

26. Complaint stands disposed of.

27. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.08.2023